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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/767,517	01/28/2004	Daniel Filion	71911 CCD	5529
7590 07/27/2005			EXAMINER	
Cooper & Dunham LLP 1185 Ave. of the Americas New York, NY 10036			GEHMAN, BRYON P	
			ART UNIT	PAPER NUMBER
			3728	
DATE MAILED: 07/27/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/767,517

Applicant(s)

FILION, DANIEL

Examiner

Bryon P. Gehman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 June 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-20 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>6/7/04</u> . | 6) <input type="checkbox"/> Other: _____  |

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1. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

2. The abstract of the disclosure is objected to because it contains legal phraseology, i.e. "said" in lines 3 (thrice), 4, 5 and 6. Correction is required. See MPEP § 608.01(b).

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 4 and 5 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. It is not seen that the disclosed body is "generally flat", as the cavities render it otherwise.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, lines 4 and 5, "said cavity" is inconsistent with line 3, "at least one cavity".

In claim 2, line 1, "of said cavities" lacks antecedent basis, as "at least one cavity" fails to distinguish plural cavities only. See also claim 3, line 1. In line 2, "said releasable hinged flap" is unclear whether a single such flap is being defined, as per the other indefiniteness of claim 1. See also claims 6-9.

In claim 3, line 1, "2 to 7" should be --two to seven--, as numerals are generally limited to dimensional terms.

In claim 6, lines 1-2, "of size and shape" is ungrammatical. In lines 2 and 3, "the cavity" is inconsistent with claim 1, line 3. See also claim 7, line 2.

In claim 8, line 4, "to stand proud" is an indefinite colloquialism.

In claim 9, line 1, "square or rectangular" should be --one of square and rectangular" to avoid an indefinite alternative phraseology. The same holds true for "line of weakness or cut" in line 2.

In claim 12, line 2, "eachother" should be two words and "said respective pieces" lacks antecedent basis.

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In claim 18, line 4, "a different cavity the package of claim 1" is ungrammatical and indefinite, as the antecedent of claim 1 defines a single cavity as a possibility, rendering the scope of a "different cavity" from a single cavity indefinite. In line 5, "said associated lid" lacks antecedent basis.

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 1-4, 7, 9 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Braber (3,811,564). Claims 1-4, 6-9 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Wyser (5,033,616). Claims 1-9, 11-13 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Prater et al. (5,551,564). Claims 1-4, 7, 9 and 17 are rejected under 35 U.S.C. 102(e) as being anticipated by Fuchs et al. (6,520,329). Claims 1-4, 7, 9, 11 and 17 are rejected under 35 U.S.C. 102(e) as being anticipated by Peterson (6,540,082). Each discloses a blister package comprising a body (10; 1 and 9; 10; 1 and 3; 10; respectively) formed by layers of packaging material and at least one cavity (inside 15; inside 8; inside 12; 2; inside 12) formed by outward projections of at

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least one of the layers with one of the layers provided with a line of weakness or a cut (22; 6; 72; c and d; between 14 and the remainder of the plastic) in the material extending partially around an entrance to the at least one cavity and defining a releasable hinged flap (35; 7; 14; defined by c and d; 14) forming an openable lid.

As to claims 2 and 3, each discloses plural cavities each provided with a respective hinged flap.

As to claim 4, each discloses a generally flat body as much as applicant.

As to claim 5, Prater et al. disclose transparent layers (see column 4, lines 14-24).

As to claims 6 and 8, Prater et al. and Wyser disclose each hinged flap having a projecting part (52-56; 5).

As to claim 7, each discloses each hinged flap having an area forming a graspable tab (edge of 35; 7'; lip at 46; 3a; at the free edge opposite the hinge).

As to claim 9, each discloses the hinged flap as rectangular and defined by a cut or line of weakness.

As to claims 11-13, Prater et al. and Peterson each disclose the body made from a single piece of material, with Prater et al. further disclosing folding into two parts with profiles that nest together.

9. Claims 18-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Peterson ('082). Disclosed is a method of distributing a product comprising dividing units into groups and introducing the units into the cavities of the package (10), closing

the cavities with the lids, providing instructions (16) and the user receiving the package at some time.

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Braber in view of Denney (4,749,085). To provide printed material on a pill package would have been obvious in view of Denney in order to indicate when the contents are to be taken.

12. Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Prater et al. as applied to claim 12 above, and further in view of Rohdin (3,776,375). Rohdin discloses a printed sheet (MESSAGE in Figure 4) sandwiched between the folded portions of a package. To employ a sandwiched sheet in the manner of Rohdin to modify Prater et al. would have been obvious in order to provide information relative to the contents.

13. Claims 12, 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fuchs et al. in view of Rohdin. Rohdin discloses a cavity defining package formed by folding a single piece of material to overly itself, and a printed sheet (MESSAGE in

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Figure 4) sandwiched between the folded portions of the package. To provide the package of Fuchs et al. from a single piece of material would have been obvious in order to simplify its manner of making as opposed to separate pieces put together. To employ a sandwiched sheet in the manner of Rohdin to modify Fuchs et al. would have been obvious in order to provide information relative to the contents.

14. Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-17, drawn to a package, classified in class 206, subclass 538.
- II. Claims 18-20, drawn to a method of distributing a product, classified in class 206, subclass 461.

The inventions are distinct, each from the other because:

15. Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the product as claimed can be used in a different process of use such as the discrete units being of no distinguishing group except the group of the entire package.



Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

16. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Shown are similar packages.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryon P. Gehman whose telephone number is (571) 272-4555. The examiner can normally be reached on Monday through Wednesday from 5:30am to 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu, can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Bryon P. Gehman". The signature is fluid and cursive, with the first name "Bryon" being more prominent than the last name "Gehman".

Bryon P. Gehman  
Primary Examiner  
Art Unit 3728

BPG